IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 258 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao,
Goa. ... Appellants.

Versus

1. Sunil Datta Bhagat,
r/o Bhagatwada,
Nagorcem, Canacona,
Goa and

2. Amar Datta Bhagat,
r/o Bhagatwada,
Nagorcem, Canacona- Goa. ... Respondents.

Mr. E. Afonso, advocate for the appellants.

Respondents though served, absent.

CORAM : A. P. LAVANDE, J.

DATE : 1ST APRIL, 2005

ORAL JUDGMENT

By this appeal, the appellants challenge Judgment and Award dated 25.08.2000, passed by the Additional District Judge III

(South) Margao in Land Acquisition Case No.134/95.

2. By notification dated 12/08/1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired large chunks of land for the Konkan Railway Corporation Ltd. Lands belonging to the respondents bearing Survey Nos. 117/11, 105/9 and 106/2 admeasuring 1492 sq. metres, which were paddy fields, situated at Chaudi-Canacona, were part of the acquired land. The Special Land Acquisition Officer awarded Rs.9/- per sq. metre.

3. Being dissatisfied, the respondents sought reference. The reference Court relied upon the Award dated 15.3.1989 and after holding that the acquired lands were similar to the lands in the said Award dated 15.3.1989, fixed the compensation in respect of the acquired lands at the rate of Rs.15/- per sq. metre in 1986 and after giving increase of 10 % every year on compounding basis, awarded Rs.24/- per sq. metre.

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the acquired lands at the rate of Rs.24/- per sq. metre is justified and, if not, what is the compensation payable in respect of the

acquired lands.

5. Mr Afonso, learned Counsel appearing for the appellants submitted that the lands involved in this appeal being agricultural lands, had no building potential and, therefore, the reference Court ought to have rejected the reference. According to the learned Counsel, the acquired lands were paddy fields. Relying upon the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, Mr. Afonso submitted that the lands could not have been used for any purpose other than the agricultural purpose. According to the learned Counsel, the respondents in this appeal had not led any evidence to establish that they were entitled to higher compensation than the one fixed by the Special Land Acquisition Officer. Mr. Afonso further submitted that granting 10% increase every year taking the Award dated 15th March, 1989 as basis is unwarranted since in places like Canacona there could not have been 10% rise in the value of the property every year and secondly, the acquired lands were agricultural lands and, as such, the value of the said lands could not have increased every year by 10 %.

6. The respondents though served has chosen not to put in appearance before this Court.

7. I have perused the records and considered the submissions made by the learned Counsel appearing for the appellants. In so far as the submission of Mr. Afonso that the acquired land had no building potential and therefore, the reference Court could not have enhanced the compensation is concerned, I am unable to accept the submission for the simple reason that the reference Court has relied upon an earlier Award passed in the year 1989 in respect of lands which are similar to the lands involved in the present appeal and are situated in the close proximity of the acquired lands. The Award dated 15th March, 1989 was in respect of land acquired for an approach road to Talpona- Galgibag bridge in Canacona Taluka and, was in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30/4/1986, issued under the Act. That being the position, in my opinion, the reference Court was fully justified in placing reliance upon the Award dated 15.3.1989 passed by the Special Land Acquisition Officer. It has to be noted that the reference Court has not fixed the compensation in respect of the acquired land on the basis of the building potential, but the compensation has been fixed on the basis of an earlier Award passed in respect of

the lands which are similar to the lands involved in the present acquisition and situated in the close proximity of the acquired land. The Apex Court in the cases of ***The State of Madras vs. A.M. Nanjan & Anr.*** **(**AIR 1976 SC 651) and ***Karan Singh & Ors. vs. Union of India*** (AIR 199 7SC 3889**),** has held that the awards given by the Land Acquisition Officer can be relied upon as a good piece of evidence for determining the market rate of the land acquired under certain circumstances. I am, therefore, of the view that the approach of the reference Court in relying upon the Award dated 15.3.1989 cannot be faulted. It is not seriously disputed by the learned Counsel for the appellants that the lands involved in this appeal are in the close proximity of the lands acquired by the Award dated 15.3.1989 and are similar in nature being paddy fields. That being the position, I do not find any infirmity in the findings given by the reference Court that the compensation in respect of the acquired lands could be fixed at the rate of Rs.15/- per sq. metre in the year 1986.

8. The next question which arises for consideration is whether the reference Court was justified in granting increase of 10% every year on compounding basis. The reference Court has granted

increase of 10 % every year, on compounding basis, relying upon the Judgment of the Apex Court in the case of ***V.M. Salgoacar & Brother Ltd. vs. Union of India*** ((1995) 2 SCC 302) and fixed the compensation payable in respect of the acquired lands at the rate of Rs.24/- per sq. metre. Ordinarily, as held by the Apex Court, increase of 10% every year has to be granted, but the question is whether the same principle should apply in cases where agricultural lands are acquired and that too at a place situated in Taluka Canacona, which lies on the southern boundary of Goa. I find considerable force in the submission of Mr. Afonso that having regard to the nature and location of the lands acquired in the present case, the reference Court ought not to have granted 10% increase every year. Although the lands acquired are agricultural lands (paddy fields) the fact remains that there are certain restric -tions on the use of the agricultural lands and more particularly paddy fields for any other purpose and secondly, the development in Canacona Taluka has not been as fast as in other major cities of Goa like Margao, Panaji, etc. Moreover, the respondents herein have not led any evidence to establish that there had been any development in or around the acquired lands from the years 1986 onwards. In my view, therefore, the increase in value of land having

building potential cannot be equated with the increase in value of agricultural land which has several restrictions in so far as its use is concerned. Nonetheless, the fact remains that judicial notice can be taken of the fact that land prices are increasing every year and even the prices of agricultural lands increase every year. Considering the fact that the lands are paddy field and are situated in Canacona Taluka, in my view, increase of 5% and not 10% every year would be justified. Accordingly, I hold that the respondents are entitled to increase of 5% every year from 1986. Therefore, the compensation in respect of the acquired lands comes to Rs.18.75 per sq. metre. I deem it appropriate to round it up to Rs.19/- per sq. metre. Needless to mention that the respondents would be entitled to all the statutory benefits under the Act.

9. In view of the above discussion, the appeal is partly allowed. The impugned Award stands modified accordingly and the compensation payable in respect of the acquired lands is fixed at Rs.19/- per sq. metre. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.